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16 CUMMINS, INC.

17 UNITED STATES DISTRICT COURT
18
19 CENTRAL DISTRICT OF CALIFORNIA

12 PAUL OLDS,	Case No. CV12-08539 R(MRWx)
13 Plaintiff,	Assigned to: Judge Manuel L. Real
14 v.	Referred to: Magistrate Judge
15 3M COMPANY a/k/a MINNESOTA	Michael R. Wilner
16 MINING & MANUFACTURING	
17 COMPANY, et al.,	UNCONTROVERTED FACTS AND
18 Defendants.	CONCLUSIONS OF LAW SUPPORTING
19	DEFENDANT CUMMINS, INC.'S MOTION
	FOR SUMMARY JUDGMENT
20	Complaint Filed: October 4, 2012
21	Trial Date: March 11, 2014

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28 Defendant Cummins, Inc.'s ("Cummins") Motion for Summary Judgment,
alternatively Motion for Partial Summary Judgment against Plaintiff Paul Olds
("Motion"), came on regularly for hearing on January 27, 2014 at 10:00 a.m.
before the Honorable Manuel L. Real, United States District Judge presiding in
Courtroom 8 of the above-referenced Court.

29
30 After considering all papers filed in support of the Motion, including all
31 admissible evidence filed in support thereof, having read and considered all
32 papers filed in opposition to the Motion, including all admissible evidence filed in

opposition thereto, the Court hereby makes the following findings of uncontroverted facts and conclusions of law supporting the entry of summary judgment in favor of Cummins, Inc.'s favor and against Plaintiff Paul Olds.

Uncontroverted Material Fact:

1. On October 4, 2012, Paul Olds filed the instant action against numerous defendants, alleging that he developed mesothelioma as a result of exposure to asbestos during his career as a mechanic and supervisor.

Supporting Evidence:

1. Plaintiff's Complaint attached as Exhibit A to the Declaration of Lisa A. Jones ("Jones Decl."), at pp. 4:13-16:5.

2. In Plaintiff's Response to Cummins' Special Interrogatory Number 1 asking Plaintiff to identify any facts supporting his claim against Cummins, Plaintiff stated that Cummins supplied engines with asbestos containing gaskets to OEM truck/tractor manufacturers including International, Ford, Kenworth and Peterbilt.

2. Cummins' Special Interrogatories to Plaintiff are attached as Exhibit B and Plaintiff's Responses to Special Interrogatories, at Interrogatory Number 1 is attached as Exhibit C of Jones Decl.

3. Plaintiff claims that the “original asbestos gaskets were removed and replaced in Plaintiff’s presence while working at Ryder [T]ruck in Orland[o], Florida from 1969 to 1979 using scrappers.” Plaintiff claims that the asbestos gaskets were swept up in his presence and new asbestos gaskets supplied by Cummins were also removed during maintenance of the engines.

3. Cummins' Special Interrogatories to Plaintiff are attached as Exhibit B and Plaintiff's Responses to Special Interrogatories, at Interrogatory Number 1 is attached as Exhibit C of Jones Decl.

4. Plaintiff claims that the “original asbestos gaskets were removed and replaced in Plaintiff’s presence while

4. Cummins' Special Interrogatories to Plaintiff are attached as Exhibit B and Plaintiff's Responses to Special

1 **Uncontroverted Material Fact:**
 2 working at Ryder [T]ruck in Orlando, Florida from 1969 to 1979 using
 3 "scappers" and that the asbestos gaskets
 4 were swept up in his presence and new
 5 asbestos gaskets supplied by Cummins
 6 were also removed during maintenance
 of the engines.

7
 8 5. Plaintiff did not produce any
 9 documents in response to Cummins'
 Request for Production of Documents.

10
 11 6. At his deposition, Plaintiff testified that he was present while another mechanic performed a tune up on a Kenworth truck in 1975 while working for Ryder at the Director of Rows facility.

12
 13 7. Plaintiff admits that he was not present for removal of the valve cover gasket and claims that a Cummins asbestos-type valve cover gasket was installed onto the truck but testified as follows:

14
 15 A: But I wouldn't make a specific inspect of it.

16 Q. Right. You didn't handle that gasket?

17 A. Well, no, no. I wouldn't have handled it.

18 Q. Okay.

19 8. Plaintiff admitted that as supervisor,

20 **Supporting Evidence:**

21 Interrogatories, at Interrogatory Number 1 is attached as Exhibit C of Jones Decl.

22 5. Cummins' Request for Production of
 23 Documents to Plaintiff is attached as
 24 Exhibit D and Plaintiff's Responses to
 25 Cummins' Requests for Production of
 26 Documents attached as Exhibit E of the
 Jones Decl.

27 6. The deposition transcript of Paul Olds
 28 taken is attached as Exhibit F of the
 Jones Decl., at p. 562: 9-14.

29 7. The deposition transcript of Paul Olds
 30 taken is attached as Exhibit F of the
 31 Jones Decl., at pp. pp. 562: 9-14, 569:5-
 32 11 and 617:10-619:25.

33 8. The deposition transcript of Paul Olds

1 **Uncontroverted Material Fact:**
2 he would get his paperwork and just
3 make sure work was being done on the
4 trucks, that he would not be in the bay
5 with the mechanic while work was being
done on the truck.

6 9. Plaintiff claims that the new valve
7 cover gasket was purchased by a “parts
8 girl” from a Cummins store in Orange
Blossom but admitted that the application
9 of that valve cover gasket would not
create dust in the following testimony:
10

11 Q. Okay. The process of
12 actually putting the new
13 gasket -- just the new
14 gasket we're talking
15 about -- putting this new
16 Cummins gasket onto the
17 engine -- or the valve cover,
18 that process of laying a
19 gasket down did not create
dust; is that
A. Putting it on, no, did
not create.
19

20 10. Plaintiff testified that he was also
21 present when a mechanic installed a
22 water pump gasket on a 290 Cummins
23 engine, however, he does not know what
24 year the work was done, which mechanic
25 did the work, the make or model number
of the tractor or truck in which the engine
was housed.
26

27 11. Additionally, Plaintiff did not know
the maintenance history for the tractor or
28

Supporting Evidence:
taken is attached as Exhibit F of the
Jones Decl., at pp. 565:25-567:2.

9. The deposition transcript of Paul Olds
taken is attached as Exhibit F of the
Jones Decl., at pp. 703:15-704:3,
7:04:14-20 and 705:6-12.

10. The deposition transcript of Paul
Olds taken is attached as Exhibit F of the
Jones Decl., at pp. 705:21-706:20.

11. The deposition transcript of Paul
Olds taken is attached as Exhibit F of the

Uncontroverted Material Fact:

truck from which the water pump was removed and he does not know whether the pump was original to the vehicle.

12. He could not identify the manufacturer of the water pump gasket being removed.

13. As to the replacement water pump gasket, he could not describe the gasket other than it was preformed and that he believed it came with the water pump allegedly purchased from the Cummins store by the parts girl, however, he then admitted that he did not see the packaging of either the pump or the gasket and that he did not see any markings or logos on the gasket itself.

14. Plaintiff testified that no dust was created by installation of the water pump gasket.

15. Plaintiff testified that there are no occasions in which he can recall seeing a Cummins gasket being handled by a mechanics while he was a service manager at Ryder other than those two instances discussed.

16. Plaintiff testified that he has never received anything in writing from Cummins corporation or any Cummins employee.

17. Other than a thirty minute conversation about in-service of trucks at

Supporting Evidence:

Jones Decl., at p. 709:8-15.

12. The deposition transcript of Paul Olds taken is attached as Exhibit F of the Jones Decl., at pp. 709:24-710:3.

13. The deposition transcript of Paul Olds taken is attached as Exhibit F of the Jones Decl., at pp. 706:21-707:22.

14. The deposition transcript of Paul Olds taken is attached as Exhibit F of the Jones Decl., at pp. 708:25-709:4.

15. The deposition transcript of Paul Olds taken is attached as Exhibit F of the Jones Decl., at p. 710:4-11.

16. The deposition transcript of Paul Olds taken is attached as Exhibit F of the Jones Decl., at p. 713:3-8.

17. The deposition transcript of Paul Olds taken is attached as Exhibit F of the

Uncontroverted Material Fact:

his station with a service manager of a Cummins store on an occasion in which he cannot recall the identification of the individual or a time period in which the conversation occurred, he has not had any other oral communications with a Cummins representative.

Supporting Evidence:

Jones Decl., at pp. 710:13-23 and 711:21- 712:15.

18. Plaintiff did not personally purchase anything from a Cummins store or representative.

18. The deposition transcript of Paul Olds taken is attached as Exhibit F of the Jones Decl., at p. 711:18-20.

19. Plaintiff is in possession of a certification issued January 11, 1974 issued by Ryder regarding the maintenance of a Cummins diesel engine.

19. The deposition transcript of Paul Olds taken is attached as Exhibit F of the Jones Decl., at pp. 713:23-714:22.

20. He claims to have received one-day training by a Ryder employee in his mechanical shop in Central Park on the overhaul of a 220 Cummins engine in which he removed valve and injector gaskets but testified that he does not know the maintenance history of the engine or whether the gaskets removed were original to the engine.

20. The deposition transcript of Paul Olds taken is attached as Exhibit F of the Jones Decl., at pp. 715:11- 716:13, and 716:18-717:7.

21. He claims that he used Cummins replacement gaskets from his parts room but testified that this application did not create dust.

21. The deposition transcript of Paul Olds taken is attached as Exhibit F of the Jones Decl., at pp. 717:14-23 and 719:6-12.

CONCLUSION OF LAW

25 1. Under *Federal Rules of Civil Procedure rule 56*, summary judgment is
26 warranted because of the evidence shows no genuine issue of material fact,
27 entitling Cummins to judgment as a matter of law.
28

1 2. Plaintiff's claims failed due to a lack of proof of exposure to an
2 asbestos-containing Cummins product.

3 3. There is no evidence that Plaintiff was exposed to asbestos as result
4 of contact with any product manufactured, sold, or distributed by Cummins and
5 thus Plaintiff's Negligence, Strict Liability and Breach of Warranty claims are
6 barred by applicable California law.

7 4. There is no evidence that Cummins and Plaintiff were in privity and
8 therefore there is no evidence, under applicable California law, that Cummins
9 breached any express or implied warranty to Plaintiff.

10 5. Plaintiff cannot set forth any admissible evidence that Cummins acted
11 with oppression, fraud, or malice and therefore, Plaintiff's prayer for punitive
12 damages is unsupported and improper.

Dated: March 7, 2014

Red

The Honorable Judge Manuel L. Real
Judge of the United States District Court

1 CERTIFICATE OF SERVICE
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3 The undersigned, counsel for CUMMINS, INC., hereby certifies that a true
4 and correct copy of the foregoing [PROPOSED] UNCONTROVERTED FACTS AND
5 CONCLUSIONS OF LAW SUPPORTING DEFENDANT CUMMINS, INC.'S MOTION FOR
6 SUMMARY JUDGMENT; CERTIFICATE OF SERVICE was filed with the Court and
7 served electronically through the CM-ECF (Electronic Case Filing) system to all
8 counsel of record and to those registered to receive a Notice of Electronic Filing
for this case on February 18, 2014.

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10 /s/ Stuart E. Supowitz
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Stuart E. Supowitz